

AMENDED IN SENATE JULY 1, 2003

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1719

Introduced by Committee on Labor and Employment (Koretz (Chair), Mullin (Vice Chair), Chu, Hancock, Laird, and Negrete McLeod)

February 27, 2003

An act to amend Sections ~~6309~~ 515.6, 6309, and 6315 of, *and to add Section 1172 to*, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1719, as amended, Committee on Labor and Employment. ~~Safety~~ Working hours and safety in employment.

Existing law regulates the rate of overtime pay an employee receives after working a certain number of hours.

This bill would define "hours worked" to include all the hours an employee is suffered or permitted to work, whether or not he or she is required to work, and would state that this is declarative of existing law. The bill would also make a technical change to other provisions relating to hours of work.

Under existing law, the Division of Occupational Safety and Health investigates complaints that a workplace is not safe, and it may issue orders necessary to ensure employee safety. It notifies a complainant of any action taken.

This bill would require the division to notify the complainant within 14 calendar days of taking action. It would also require the division to

annually compile and release on its Web site information as to complaints received and actions taken.

Under existing law, the Bureau of Investigation within the division is responsible for directing accident violations where there is a serious injury to 5 or more employees, death, or a request for prosecution by the division. It also refers appropriate cases to prosecuting authorities.

This bill would require the division to provide helpful information to the bureau. It would also require the bureau to notify the prosecuting authorities within 14 calendar days of a determination that there is legally insufficient evidence of a violation of law if the prosecuting authorities request notice.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 515.6 of the Labor Code is amended to*
2 *read:*

3 515.6. (a) Section 510 shall not apply to any employee who
4 is a licensed physician or surgeon, ~~whose primary duties~~ *who is*
5 *primarily engaged in duties that* require licensure pursuant to
6 Chapter 5 (commencing with Section 2000) of Division 2 of the
7 Business and Professions Code, and whose hourly rate of pay is
8 equal to or greater than fifty-five dollars (\$55.00). The Division
9 of Labor Statistics and Research shall adjust this threshold rate of
10 pay each October 1, to be effective the following January 1, by an
11 amount equal to the percentage increase in the California
12 Consumer Price Index for Urban Wage Earners and Clerical
13 Workers.

14 (b) The exemption provided in subdivision (a) shall not apply
15 to an employee employed in a medical internship or resident
16 program or to a physician employee covered by a valid collective
17 bargaining agreement pursuant to Section 514.

18 SEC. 2. Section 1172 is added to the Labor Code, to read:

19 1172. For the purposes of regulations and orders adopted
20 pursuant to this chapter, “hours worked” means the time during
21 which an employee is subject to the control of the employer and
22 includes all of the time that the employee is suffered or permitted
23 to work, regardless of whether the employee is required to work.

24 SEC. 3. Section 6309 of the Labor Code is amended to read:



6309. If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to a complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

The division shall keep complete and accurate records of all complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, within 14 calendar days

1 of taking any action. The records of the division shall include the
2 dates on which any action was taken on the complaint, or the
3 reasons for not taking any action on the complaint. The division
4 shall, pursuant to authorized regulations, conduct an informal
5 review of any refusal by a representative of the division to issue
6 a citation with respect to an alleged violation. The division shall
7 furnish the employee or the representative of employees
8 requesting the review a written statement of the reasons for the
9 division's final disposition of the case.

10 The name of a person who submits to the division a complaint
11 regarding the unsafe condition of an employment or place of
12 employment shall be kept confidential by the division, unless that
13 person requests otherwise.

14 The division shall annually compile and release on its Web site
15 data pertaining to complaints received and citations issued.

16 The requirements of this section do not relieve the division of
17 its requirement to inspect and assure that all places of employment
18 are safe and healthful for employees. The division shall maintain
19 the capability to receive and act upon complaints at all times.

20 ~~SEC. 2.~~

21 *SEC. 4.* Section 6315 of the Labor Code is amended to read:

22 6315. (a) There is within the division a Bureau of
23 Investigations. The bureau is responsible for directing accident
24 investigations involving violations of standards, orders, special
25 orders, or Section 25910 of the Health and Safety Code, in which
26 there is a serious injury to five or more employees, death, or
27 request for prosecution by a division representative. The bureau
28 shall review inspection reports involving a serious violation where
29 there have been serious injuries to one to four employees or a
30 serious exposure, and may investigate those cases in which the
31 bureau finds criminal violations may have occurred. The bureau
32 is responsible for preparing cases for the purpose of prosecution,
33 including evidence and findings.

34 (b) The division shall provide the bureau with all of the
35 following:

36 (1) All initial accident reports.

37 (2) The division's inspection report for any inspection
38 involving a serious violation where there is a fatality, and the
39 reports necessary for the bureau's review required pursuant to
40 subdivision (a).

1 (3) Any other documents in the possession of the division
2 requested by the bureau for its review or investigation of any case
3 or which the division determines will be helpful to the bureau in
4 its investigation of the case.

5 (c) The supervisor of the bureau is the administrative chief of
6 the bureau, and shall be an attorney.

7 (d) The bureau shall be staffed by as many attorneys and
8 investigators as are necessary to carry out the purposes of this
9 chapter. To the extent possible, the attorneys and investigators
10 shall be experienced in criminal law.

11 (e) The supervisor of the bureau and bureau representatives
12 designated by the supervisor have a right of access to all places of
13 employment necessary to the investigation, may collect any
14 evidence or samples they deem necessary to an investigation, and
15 have all of the powers enumerated in Section 6314.

16 (f) The supervisor of the bureau and bureau representatives
17 designated by the supervisor may serve all processes and notices
18 throughout the state.

19 (g) In any case where the bureau is required to conduct an
20 investigation, and in which there is a serious injury or death, the
21 results of the investigation shall be referred in a timely manner by
22 the bureau to the appropriate prosecuting authority having
23 jurisdiction for appropriate action, unless the bureau determines
24 that there is legally insufficient evidence of a violation of the law.
25 If the bureau determines that there is legally insufficient evidence
26 of a violation of the law, the bureau shall notify the appropriate
27 prosecuting authority, if the prosecuting authority requests notice.

28 (h) The bureau may communicate with the appropriate
29 prosecuting authority at any time the bureau deems appropriate.

30 (i) Upon the request of a county district attorney, the
31 department may develop a protocol for the referral of cases that
32 may involve criminal conduct to the appropriate prosecuting
33 authority in lieu of or in cooperation with an investigation by the
34 bureau. The protocol shall provide for the voluntary acceptance of
35 referrals after a review of the case by the prosecuting authority. In
36 cases accepted for investigation by the prosecuting authority, the
37 protocol shall provide for cooperation between the prosecuting
38 authority, the division, and the bureau. Where a referral is declined
39 by the prosecuting authority, the bureau shall comply with
40 subdivisions (a) to (h), inclusive.

1 *SEC. 5. Section 2 of this act is declarative of existing law and*
2 *shall not be deemed to alter, modify, or otherwise affect any*
3 *provision of existing law or any wage order of the Industrial*
4 *Welfare Commission.*

